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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Robert G. Bates
Clerk, Circuit Court of Cullman County
County Courthouse -- Room 303
500 Second Avenue Southwest
Cullman, Alabama 35055

SECTION 17-11-5(d) OF THE CODE OF ALABAMA HAS BEEN AMENDED BY ACT NO. 2014-006 REGARDING ABSENTEE BALLOT APPLICATIONS FOR MILITARY AND OVERSEAS VOTERS UNDER THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT ("UOCAVA").

Circuit Clerks - Absentee Election
Manager - Municipalities - Absentee
Ballots - Military Voters -
Uniformed and Overseas Citizens
Absentee Voting Act

Military and overseas voters may apply for an absentee ballot for a municipal election and are required to submit the application to the absentee ballot manager designated for the municipal election. The county absentee election manager (usually the circuit clerk) is not required to provide the municipal absentee election manager with a list of the names and addresses of the military and overseas voters who have submitted absentee ballot applications to the circuit clerk for state, county, and federal elections.

Dear Mr. Bates:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Are county absentee election managers required to furnish municipal absentee election managers with a list of names and addresses for

all valid absentee ballot applications filed with the county absentee election managers by military and overseas citizens?

FACTS AND ANALYSIS

Section 17-11-3 of the Code of Alabama sets forth the reasons why a qualified elector may apply for and vote an absentee ballot in any primary, general, special, or municipal election. ALA. CODE § 17-11-3 (2006). One of the reasons listed is the following:

(5) The person is a member of, or spouse or dependent of a member of, the Armed Forces of the United States or is similarly qualified to vote absentee pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, [UOCAVA], 42 U.S.C. 1973ff *[et seq.]*.

Id. The persons who vote absentee pursuant to this provision are commonly referred to as "military and overseas" voters or "UOCAVA" voters, and these terms are used interchangeably in this opinion.

An applicant for an absentee ballot may submit the application prescribed and designed by the Secretary of State, a handwritten application that contains sufficient information to identify the applicant and verify that the applicant is a registered voter, or a federal postcard application form. ALA. CODE §§ 17-11-3(b), 17-11-4, and 17-11-5(d) (2006). The application for an absentee ballot "shall be filed with the person designated to serve as the absentee election manager." ALA. CODE § 17-11-4 (2006).

In state, county, and federal elections, the circuit clerk serves as the absentee election manager, unless the clerk declines or is disqualified and another qualified elector in the county is designated to serve as the absentee election manager. ALA. CODE § 17-11-2 (2006). In municipal elections, the city clerk serves as the absentee election manager, unless the city clerk is disqualified and another qualified elector of the city is appointed to serve as the absentee election manager. ALA. CODE § 17-11-15 (2006).

Thus, if a UOCAVA voter desires to vote by absentee ballot in a state, county, or federal election, the application for an absentee ballot

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should be submitted to the absentee election manager for the county, which is usually the circuit clerk. *See* ALA. CODE § 17-11-2 (2006). On the other hand, if a UOCAVA voter desires to vote by absentee ballot in a municipal election, the application for an absentee ballot should be submitted to the municipal absentee election manager, which is usually the city clerk. *See* ALA. CODE § 17-11-15 (2006). Nothing in the Code requires or permits the county absentee election manager to share the list of valid applications filed for the state, county, or federal election with a municipal absentee election manager. Furthermore, the Alabama Code provides no procedure or mechanism for the circuit clerks to provide this information to the more than 400 municipal absentee election managers in the state.

Your question arises because of somewhat confusing language in section 17-11-5 of the Code and the requirements in section 17-11-5 of the Code relating to the fact that UOCAVA applications remain valid for two regularly scheduled general election cycles for federal office. Section 17-11-5(d) states as follows:

For individuals voting pursuant to the federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff [*et seq.*], the Secretary of State shall by rule prescribe use of standardized military and overseas voter registration applications and applications for absentee ballots adopted by the United States government for such use. The Secretary of State shall also prescribe by rule provisions within the standard state application form for absentee voting which permit the voter to identify himself or herself as a military or overseas voter. *Unless otherwise indicated by the military or overseas voter, an application for an absentee ballot by such a voter shall remain valid through the next two regularly scheduled general election cycles for federal office. The circuit clerk shall confirm by January 1 of each election year the address of the military and overseas voters prior to mailing the ballots during each election cycle, and the absentee election manager shall provide an absentee ballot to the military and overseas voters for each such subsequent election. The absentee election manager, within seven days*

after each regularly scheduled general election for federal office, shall report the number of military and overseas ballots mailed out and the number of ballots received to the Secretary of State who shall report this information to the Federal Election Assistance Commission within 90 days of each regularly scheduled general election for federal office.

ALA. CODE § 17-11-5(d) (2006) (emphasis added). This section requires an absentee election manager who receives an application for an absentee ballot from a UOCAVA voter to keep that application valid for the next two regularly scheduled general election cycles for federal office (essentially four years), unless the voter indicates a shorter period of time.

The requirement that the absentee ballot application for UOCAVA voters remain valid for this period of time for federal elections is consistent with a federal law requirement under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, *et seq.*, as well as with Alabama's professed public policy in favor of breaking down barriers to voting for military and overseas citizens. The federal law, in pertinent part, provides as follows:

If a State accepts and processes an official post card form . . . submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application . . . and the voter requests that the application be considered an application for an absentee ballot *for each subsequent election for Federal office* held in the State through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide an absentee ballot to the voter for each such subsequent election.

42 U.S.C. §1973ff-3(a) (2003) (emphasis added). Thus, the federal law requires that the UOCAVA application be valid for elections for federal office held during the specified time period. For non-UOCAVA voters, Alabama law requires separate absentee ballot applications for elections that are more than 30 days apart. ALA. CODE § 17-11-5(c) (2006).

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Based on the language in section 17-11-5(d) of the Code, circuit clerks who have valid UOCAVA applications on file in their office have sent absentee ballots to a UOCAVA voter for any state and/or county elections that have occurred within two federal election cycles since the application was received, even if a federal office was not on the ballot for that election. Further, for UOCAVA voters whose applications will remain valid during the upcoming year's election, section 17-11-5(d) specifically requires that the *circuit clerk* confirm by January 1 of each election year the address of the UOCAVA voter as provided in the application and that the county absentee election manager (generally, the circuit clerk) mail the UOCAVA applicant an absentee ballot for the upcoming elections. This practice is consistent with public policy in favor of breaking down barriers to voting for military and overseas citizens in state elections.

The Alabama Code does not place a similar requirement on a *city clerk* to confirm addresses for UOCAVA voters that are filed with the municipal absentee election manager. The language in section 17-11-5(d) applies to those elections where federal offices are on the ballot and no federal offices are on the ballot in municipal elections. Accordingly, municipal absentee election officials are not required to keep applications from UOCAVA voters on file for the next two regularly scheduled general election cycles for federal office. Section 17-11-5(c) does, however, provide that separate applications are not required for persons voting pursuant to UOCAVA. Thus, an application for an absentee ballot for a municipal election from a person voting pursuant to UOCAVA is valid for the current municipal election cycle, which includes the general municipal election and a runoff municipal election, if one is necessary, unless the voter indicates otherwise on the application.

Your question is, therefore, whether the county absentee election manager is required by section 17-11-5(d) of the Code to provide the municipal absentee election manager with a list of the names and addresses of the UOCAVA voters who have submitted absentee ballot applications to the circuit clerk for state, county, and federal elections and whose applications remain valid. The answer is no. As previously stated, section 17-11-4 specifically requires that an application for an absentee ballot (even from a UOCAVA voter) must be filed with the person designated to serve as the absentee election manager; in a city election that person is the city clerk, not the circuit clerk. Furthermore, the Alabama Code provides no procedure for the circuit clerks to make this information available to the municipal absentee election manager.

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This Office recognizes that allowing military and overseas voters to apply for an absentee ballot for all elections, including municipal elections, with one application form that is sent to one official would simplify the absentee voting process for military and overseas voters. This Office, however, cannot create a procedure to accomplish this because this Office would be legislating, rather than interpreting, the law as adopted by the Legislature.

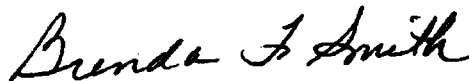
CONCLUSION

Military and overseas voters or UOCAVA voters may apply for an absentee ballot for a municipal election and are required to submit the application to the absentee ballot manager designated for the municipal election, usually the city clerk. The county absentee election manager (usually the circuit clerk) is not required to provide the municipal absentee election manager with a list of the names and addresses of the UOCAVA voters who have submitted absentee ballot applications to the circuit clerk for state, county, and federal elections.

I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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